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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,481	12/15/2003	Yong-San Yoon	9951-001US	3468
22897	7590	06/04/2007	EXAMINER	
DEMONT & BREYER, LLC			CUMBERLEDGE, JERRY L	
100 COMMONS WAY			ART UNIT	PAPER NUMBER
HOLMDEL, NJ 07733			3733	
MAIL DATE		DELIVERY MODE		
06/04/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/736,481	YOON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Jerry Cumberledge	3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 26 April 2007.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-6 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-6 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I (claims 1-6) in the reply filed on 04/26/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The Applicant has canceled the claims of Group II (claims 7-17).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because they are drawn to non-statutory subject matter. In claim 1, line 2, applicant positively recites part of a human, i.e. "fixed at three positions of the pelvis". Thus claims 1-6 include a human within their scope and are non-statutory.

A claim directed to or including within its scope a human is not considered to be patentable subject matter under 35 U.S.C. 101. The grant of a limited, but exclusive property right in a human being is prohibited by the Constitution. *In re Wakefield*, 422 F.2d 897, 164 USPQ 636 (CCPA 1970).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the first plane" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the second plane" in line 4. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Farmer et al. (US Pat. 5,141,512).

Farmer et al. discloses a T-shaped gauge comprising: first to third probe rods (Fig. 10B, refs. 66); a T-shaped supporter (Fig. 10b, ref. 67) slidably connected to the probe rods to change the first plane formed by the three positions, the T-shaped supporter being supported from the first plane to a predetermined height by the probe rods (Fig. 10B); a first dynamic reference base (Fig. 10B, ref. 71) separably mounted at a portion of the T-shaped supporter (Fig. 10B), the first dynamic reference base emitting

light (column 9, lines 46-55, i.e. "light source") to indicate the first plane; and a moving part moved symmetrically (Fig. 10B, ref. 62) from the T-shaped supporter by the first and second probe rods. The T-shaped supporter includes: first (Fig. 10B, ref. 67 left) and second guide bars (Fig. 10B, ref. 67 right) of predetermined widths, the guide bars being formed at the coaxial line on the second plane (Fig. 10B) and extending from the center point toward both sides thereof by predetermined lengths (Fig. 10B); and a third guide bar (Fig. 10B, ref. 67, middle) of a predetermined width located on the same plane as the first and second guide bars at right angles to the first and second guide bars on the second plane (Fig. 10B), the third guide bar extending from the center point by a predetermined length (Fig. 10B). The first, second and third guide bars correspond to the probe rods along an axis directing the center point from ends thereof (Fig. 10), and respectively have first to third guide grooves of predetermined widths and lengths (i.e. the grooves which the ends of the probe rods are placed in, near refs. 68). The third guide bar further includes a second guide groove (Fig. 10B, groove of ref. 65 which ref. 66 is placed into) of predetermined width and length formed between the third guide groove and the center point. The moving part includes: a transfer fragment (Fig. 10B, ref. 68) mounted in the second guide groove and reciprocating axially; a first link (Fig. 10B, ref. 68, left) for connecting the first probe rod coupled to the guide groove of the first guide bar and the transfer fragment; and a second link (Fig. 10B, ref. 68, right) for connecting the second probe rod coupled to the guide groove of the second guide bar and the transfer fragment. The first dynamic reference base includes: a fixing member having an end separably mounted to the T-shaped supporter (column 9, lines 32-34); a

flat plate (Fig. 10B, ref. 74) connected to the other end of the fixing member; and a light generator (Fig. 10A, ref. 75).

With regard to statements of intended use and other functional statements (e.g. ...to change the first plane formed by the three positions..., ...for connecting the first probe rod coupled to the guide groove...), they do not impose any structural limitations on the claims distinguishable over the device of Farmer et al., which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6, as best understood by the examiner, is rejected under 35 U.S.C. 103(a) as being unpatentable over Farmer et al. (US Pat. 5,141,512).

Farmer et al. discloses the claimed invention except for the flat plate being cross-shaped and more than one light generator mounted at ends of the flat plate.

With regard to the flat plate being cross-shaped, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to have constructed the flat plate of Farmer et al. being cross-shaped, since applicant has not disclosed that such shape solves any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of using as a plate on which a light generator is mounted. In re Dailey and Eilers, 149 USPQ 47 (1966).

With regard to the plate having more than one light generator mounted at ends of the flat plate, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the plate of Farmer et al. with multiple light generators mounted on it, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Cumberledge whose telephone number is (571) 272-2289. The examiner can normally be reached on Monday - Friday, 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLC



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SUPERVISORY PATENT EXAMINER